

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In re	:	Chapter 13
STEPHEN WILLIAM GEARY	:	CASE NO. 06-42136-JBR
ROSEMARIE GEARY	:	
<u>DEBTORS</u>	:	

**ORDER ON THE COURT'S ORDER TO SHOW CAUSE [#58]**

On June 18, 2007 the Court issued an Order for Attorney Francis Lafayette to Show Cause [#58] why the Court should not order him to disgorge all money paid to him by the Debtors and impose additional sanctions in connection with the dismissal of the above case and his apparent lack of communication with the Debtors. The Court held an evidentiary hearing on the Show Cause Order on July 31, 2007 and ordered the disgorgement of all fees and took the issue of whether to impose additional sanctions under advisement.

**FACTS**

On October 11, 2006 the Debtors, through Attorney Lafayette, filed a voluntary Chapter 13 petition. The Court issued an order that certain documents, including schedules and statement of financial affairs, and a Chapter 13 plan, be filed by October 27, 2007. The Court further extended the deadline to November 10, 2006 at the Debtors' request. The missing documents were not filed, and on November 15, 2006, the Court dismissed the case. The Court mailed a copy of the order dismissing the case to each of the Debtors. On November 17, 2006 the Debtors filed the missing

documents<sup>1</sup> and sought to have the order of dismissal vacated on the grounds that they were ill and could not meet the deadlines. The Court entered an order on November 20, 2006 vacating the dismissal.

The first meeting of creditors was held following which the Debtors and the Chapter 13 Trustee filed a motion and agreed order whereby the Debtors were to amend their plan, means test and schedule C by December 29, 2006. On December 31, 2006 the Debtors filed an expedited motion to extend the deadline on the grounds that Attorney Lafayette had been hospitalized for two weeks in December. They were granted the extension to January 29, 2007 as requested.

On January 11, 2007 the Debtors' mortgagee sought relief from the automatic stay to foreclose on the Debtors' residence. On the same day the Debtors filed an opposition to the motion for relief and the matter was scheduled for hearing on February 6, 2007. On January 30, 2007 the Debtors filed a motion to continue the hearing because Attorney Lafayette was hospitalized on January 19, 2007 and was expected to undergo surgery, followed by a six week recovery period. On January 31, 2007 the Debtors filed a second expedited motion to extend the time to file their documents until February 16, 2007. On February 1, 2007 the Court granted both motions and continued the hearing on the motion for relief, as well as hearings in two other of Attorney Lafayette's cases, until February 27, 2007. In that order the Court stated:

Counsel to the above-captioned Debtors filed a motion in

---

<sup>1</sup>Unless otherwise stated, all pleading filed by the Debtors refer to pleadings filed by Mr. Lafayette on their behalf.

each of their respective cases seeking to continue matters, in which the Debtors are the non-moving parties, from February 6, 2007 to a date six weeks thereafter. Although the Court is sympathetic to Counsel's situation, the Court cannot grant the lengthy extension requested given the serious nature of these matters. The Court hereby continues these matters to **February 27, 2007 at 1:30 PM** to give Counsel the opportunity to make arrangements for substitute counsel to properly represent his clients on these matters as well as on all other matters arising in Counsel's cases. Counsel cannot assume that the Court will grant future continuances in these or other matters without the consent of the moving party.

On February 26, 2007 Attorney Lafayette sought and obtained permission to attend the February 27 hearing telephonically. In the motion to appear telephonically, Attorney Lafayette represented that he was not expected to be released from the hospital until February 27. At the February 27 hearing the parties reported that they had reached an agreement regarding the motion for relief from stay and were given 14 days to file the stipulation, which was filed on March 5, 2007 by the mortgagee.

On February 28, 2007 the Chapter 13 Trustee filed an affidavit of non-compliance because the amended documents had not been filed. The Debtors did not file an opposition or the amended documents and therefore, on March 12, 2007 the Court dismissed the case for the second time. A notice of dismissal was sent to the Debtors as well as delivered electronically to Attorney Lafayette. On May 11, 2007 the Chapter 13 Trustee filed her final report and account of administration. On June 18, 2007 the Debtors, through a new attorney, filed an emergency motion to reopen the case as well as an emergency motion to vacate the order of dismissal and to reimpose the automatic stay because the mortgagee was refusing to accept mortgage payments following the dismissal of the case. In the emergency motion, the Debtors represented

that they did not know of the dismissal. The Court reopened the case and vacated the dismissal pending a hearing on the motion. The Court also issued the show cause order. At the hearing the Court granted the Debtors' motion and reimposed the automatic stay. The Court set the show cause order for an evidentiary hearing. A contested matter prehearing order, which required the filing of a joint prehearing memorandum by July 20, 2007, issued. On July 20, 2007 the Debtors, through their successor counsel, filed a status report in which they reported that "Attorney Lafayette ultimately offered to return \$1,500 to the Debtors, who had paid him \$3,000...."<sup>2</sup> The Court issued an order confirming that despite the Debtors' acceptance of the offer, the evidentiary hearing on the order to show cause would go forward as scheduled. The Debtors then sought and obtained an extension of time to file the joint prehearing memorandum until July 26, 2007. At 4:11 P.M. the Debtors filed the prehearing memorandum and although they captioned it as a "joint" memorandum, it was signed only by their successor counsel and contained the following statement:

I have had two conversations today with attorney Lafayette regarding his providing me with information to be included in this "Joint" pre-trial statement. Early this morning I told him I wanted to have his material by 12 noon. I provided both my email address and fax number. At 3:15 P.M., not having received anything from him, I called his office again and spoke to him. He said I would have his material "within 20 minutes". It is now 4:06 P.M. and I have not received anything from attorney Lafayette.

Attorney Lafayette did not file anything in response to the order to show cause

---

<sup>2</sup>The \$3,000 included the fee for filing the bankruptcy petition as well as the credit counseling fee. The order for disgorgement permitted Attorney Lafayette to retain \$474 as reimbursement for these expenses.

contested matter prehearing order. At the evidentiary hearing Attorney Lafayette represented that he faxed his version of the pretrial memorandum to successor counsel on July 26. Successor counsel confirmed that he received the fax but after he had filed the prehearing memorandum. Successor counsel also reported that he received an email from Attorney Lafayette's assistant at 4:30 P.M. on July 26, 2007 in which she stated that Attorney Lafayette filed a prehearing memorandum. That statement, as the docket indicates, was not correct. At the hearing the Debtors' successor counsel also informed the Court that the Debtors' 2001 Ford Escape had been repossessed during the second dismissal period.<sup>3</sup>

At the hearing Attorney Lafayette indicated that he had been hospitalized several times during the Debtors' case. The Court asked him to identify the times during which he was hospitalized. Attorney Lafayette reported that the first hospitalization was the beginning through the middle of December 2006.<sup>4</sup> He stated he was readmitted in January 2007 for a day or two and then went to a different hospital for a period that he identified as the end of December 2006 or the beginning of January 2007 but represented he could not recall the exact dates. He was hospitalized for approximately

---

<sup>3</sup>After the case had been reinstated for the second time, Ford filed a motion for relief to sell the vehicle and indicated that the debtors had surrendered the car. Although the car appears to have been repossessed, the Court notes that the motion for relief indicated that the Debtor were in arrears for post-petition, as well as pre-petition, payments.

<sup>4</sup>Although Attorney Lafayette is under an order to file fee application in all of his bankruptcy cases in Massachusetts, see *In re LaFrance*, 311 B.R. 1 (Bankr. D. Mass. 2004), thus necessitating the keeping of detailed time records in all his bankruptcy cases, and despite the fact that he was aware of the evidentiary hearing, he was unprepared to address the dates of his hospitalization or the dates of his contacts with these Debtors.

two and a half months. Three weeks after he was released from the hospital, he was hospitalized for a week. When he was asked about the date of the last hospitalization, Attorney Lafayette responded that it was about six weeks ago, meaning six weeks before the evidentiary hearing. When the Court confirmed that the last hospitalization would have occurred in June 2007, Attorney Lafayette responded that the hospitalization was in April.

Attorney Lafayette stated that during his extended hospitalizations, he had limited coverage for some of his state court civil matters but "luckily there was nothing that developed that was problematic," apparently acknowledging that he had no coverage for his practice during this period and clearly ignoring that there was a problem, at least in this case. He stated he had conference calls from his hospital bed when he could but there was limited ability to go through the hospital telephone system. He also stated he knew the Debtors tried to call him while he was in the hospital although it is unclear when he learned of their attempts to reach him.

Attorney Lafayette was unable to tell whether his office notified the Debtors of the second dismissal or whether they learned of that when they received a copy of the notice of dismissal mailed by the Clerk's Office. After Mrs. Geary testified, however, he did state that he met with the Debtors after the dismissal. Attorney Lafayette took no steps to have the second order of dismissal vacated and acknowledged that he did not properly represent the Debtors but explained that the doctors kept clearing him to return to work when he in fact continued to be ill. Moreover, apparently as an additional justification for his lack of attention to this case, he argued that the Debtors were in arrears on their mortgage and their best hope was to refinance their residence.

Mrs. Geary confirmed that she learned of the dismissal from the Court's notice of dismissal and that she and her husband called Mr. Lafayette's office sometime around the end of March 2007 when they received the notice. They spoke with Attorney Lafayette's assistant who told them they needed to come in to the office to see Attorney Lafayette. Mrs. Geary testified that she and her husband met with Attorney Lafayette and thought the meeting was sometime in mid-March. At the meeting Attorney Lafayette told them they were no longer in foreclosure but wanted them to call a company which had sent Attorney Lafayette a letter about refinancing the Debtors' mortgage. Mrs. Geary further testified that she did not know what Attorney Lafayette meant by the statement that they were no longer in foreclosure but that her interpretation was that they were not in trouble with their mortgage company. Moreover she stated that she was not comfortable with the letter sent by the refinancing company as they were offering refinancing to Mr. Lafayette, not the Debtors. The Debtors apparently assumed that Attorney Lafayette had obtained reinstatement of their case. Sometime following the meeting, the Debtors made a mortgage payment but the check was returned by the mortgagee. They realized that there was a problem and contacted successor counsel.

Mrs. Geary also testified that when the case was dismissed for the second time, the car financing company refused to accept less than all arrears, apparently including both pre and post-petition arrears. The secured creditor refused to negotiate with the Debtors and repossessed the car.

Mrs. Geary also testified she kept a date book in which she tried to list all meeting with Attorney Lafayette. After reviewing the dates, Mrs. Geary testified that

before the March 2007 meeting, the last meeting they had with Attorney Lafayette was on December 31, 2006. They had a meeting scheduled for January 19, 2007 but the Debtors received a call canceling that meeting because of the Mr. Lafayette's illness.

### **DISCUSSION**

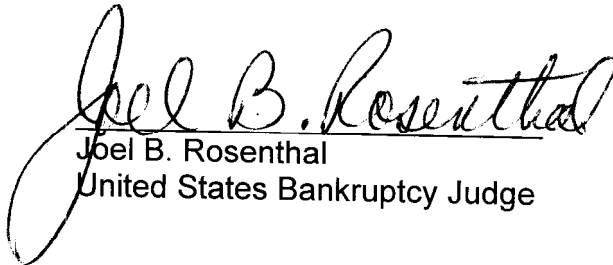
Emergencies and unforeseen circumstances unfortunately befall most people. Attorneys are no exception. Fortunately most of the attorneys practicing before this Court have been able to deal with those crises, especially those that are short-lived, without adversely affecting their clients' interests by seeking extensions, requesting the rescheduling of hearings, working with opposing counsel, and/or arranging for another attorney to cover their cases. Solo practitioners, such as Attorney Lafayette, are vulnerable to having their practices disrupted when a crisis occurs and it is important for them to have and their staff to understand a contingency plan for protecting their clients. Although Attorney Lafayette arranged coverage of some sort for his state civil matters, he neglected to do so for these Debtors. His excuses that the doctors kept telling him he could return to work or that these Debtors were not likely to succeed in a Chapter 13 absent a refinancing of their house cannot justify letting the second dismissal of this case go unattended. Whether the Debtors' car might have ultimately been repossessed or their case dismissed because they did not have the financial resources to fund a plan does not excuse Attorney Lafayette's attention to this matter. Nor does his illness, however unexpected or debilitating, explain his lack of zealous representation of these Debtors, especially when this Court had provided him with the opportunity to arrange substitute counsel.

Therefore, it is hereby ORDERED that Attorney Lafayette attend a continuing



education program or programs regarding professional responsibilities owed to clients and, including if possible, the responsibility of solo practitioners to ensure that their clients' interest are not left unattended. The program or programs must total a minimum of 8 hours and must be pre-approved by the Court. The course or courses are to be completed within 90 days of the date of this Order.

Dated: August 6, 2007



Joel B. Rosenthal  
United States Bankruptcy Judge